

August 4, 2004

MEMORANDUM

TO: Purchasing Offices
Departments, Institutions, Agencies
Commonwealth of Virginia

FROM: Ron Bell
Director

SUBJECT: Procurement Information Memoranda (PIM) #98-017

Enclosed is PIM #98-017, effective August 4, 2004, representing changes to the September 1998 edition of the *Agency Procurement and Surplus Property Manual (APSPM)*. The changes are noted in the table below. All changes to the *APSPM*, including PIM #98-017, are incorporated into a web-based *APSPM*, which is downloadable from the eVA and Division of Purchases and Supply web sites at www.eva.state.va.us and www.dgs.state.va.us/dps, respectively. The location of text changes is indicated by an arrow in the margin (—) with the corresponding PIM number identified next to the changes.

Appendix C contains a log in which to list the PIM number and date of revision. This letter and the corresponding PIM #98-017 should be filed in the back of the Appendix C log.

	Summary of Changes
Annex 1-A	The Agency Standards for Increased Delegated Procurement Authority, under Purchasing Program Standards referring to VBO advertising is revised to indicate that an agency must advertise all procurements that exceed \$50,000 (goods, services, or construction) in the VBO on the eVA web site.
3.10	The section on Small, Women-Owned & Minority Businesses has been revised to include sub-sections to implement the memorandum on SWA M Procurement, dated July 30, 2004, from the Governor's Chief of Staff. It includes sub-sections on Agency Plans, Certified Vendors, Contract Sizing, Consultation with the Department of Minority Business Enterprise (DMBE), Competitive Requirements, and Award to Other than the Lowest Priced Bidder or Highest Ranked Offeror.
3.18	3.18, 3.18 a. and 3.18 d. on Publicly Posted Notices is revised to require solicitation, addenda and award actions (including emergency and sole source award) to be posted for requirements over \$50,000.
Annex 3-B	Annex 3-B, Summary of Procurement Policies, is revised to depict new competition threshold limits and requirements.

5.1 a.	The section on verbal quotes is revised to require soliciting, a minimum of at least one valid minority or women-owned business source, if available for the purchase of goods or services up to the \$5,000 single quote limit. Additional sources may also be solicited.
5.1 b.	The section on written quotes is revised to require soliciting four (4) valid sources, including a minimum of two (2) minority or women-owned businesses, if available, in writing for purchases over \$5,000 and up to the small purchase dollar threshold of \$50,000.
5.2	The last sentence of this section adds, "Charge card purchases shall be processed through eVA unless the purchase is made over the counter at the site of the sale and picked up by the individual card holder, as exempted from processing through eVA in 14.9b 17."
5.3	The section on Single Quotation is revised to require soliciting a minimum of at least one valid minority or women-owned business source, if available for the purchase of goods or services up to the \$5,000 single quote limit. Additional sources may also be solicited. The section outlines the required documentation for a single quote.
5.4	Deleted.
5.5	Deleted.
5.6	The section title, Unsealed Bidding, is revised to show the threshold is changed to Over \$5,000 to \$50,000. Section 5.5 is deleted and requirements for four quotations are rolled into one section on Unsealed Bidding.
5.6 b.	Sub-section b. is revised to require soliciting four (4) valid sources, including a minimum of two (2) minority or women-owned businesses, if available, in writing for purchases over \$5,000 and up to the small purchase dollar threshold of \$50,000.
5.6 d. and e.	Deleted.
5.6 f.	This section is renumbered as 5.6 d. The award of an unsealed bid may be made to a reasonably priced minority or woman-owned bidder that is other than the lowest priced bidder when such purchases are made under a remedial procurement plan established in accordance with guidelines proscribed by the DMBE.
5.7 a	The section title, Unsealed Proposals, is revised to show the threshold is changed to Over \$5,000 to \$50,000.
5.7 a. 1.	Sub-section 5.7 a is revised to require soliciting four (4) valid sources, including a minimum of two (2) minority or women-owned businesses, if available, by mail, fax, or electronically.
5.7 a. 4.	Unsealed proposal awards may be made to a reasonably ranked minority or woman-owned offeror that is other than the highest ranking offeror when such purchases are made under a remedial procurement plan established in accordance with guidelines proscribed by the DMBE.
5.7 b.	The sub-section title, Unsealed Best Value Acquisition, is revised to show the threshold is changed to Over \$5,000 to \$50,000.
5.7 b. 8.	Sub-section 5.7 b. 8. is revised to require soliciting four (4) valid sources, including a minimum of two (2) minority or women-owned businesses, if available, by mail, fax or electronically.
5.7 b. 11.	In unsealed Best Value Acquisition, the award may be made to a reasonably ranked minority or woman-owned offeror that is other than the highest ranking offeror when such purchases are made under a remedial procurement plan established in accordance with guidelines proscribed by the DMBE.

Annexes 5-A, 5-B, 5-C, 5-D, 5-E, and 5-F	The small purchase process flow charts are revised to reflect the new competition thresholds and solicitation requirements contained in Chapter 5. Annex 5-D on the Four Quotation process is deleted.
6.1	The first sentence of this section on Competitive Sealed Bidding is reworded and advises that the award is made to the lowest responsive and responsible bidder; however, an exception exists and an award may be made to a reasonably priced minority or woman-owned bidder that is other than the lowest priced bidder when such purchases are made under a remedial procurement plan established in accordance with guidelines proscribed by the DMBE.
6.2 e.	Competitive Sealed Bidding competition requirements are revised to require soliciting at least six (6) valid sources, including a minimum of four (4) minority or women-owned businesses, if available.
6.3 c.	The section on evaluation of IFBs is revised to indicate that multiple bidders are evaluated to make the determination of responsibility.
6.3 d.	The competitive sealed bidding award section is revised to allow award to a reasonably priced minority or women-owned bidder other than the lowest responsive and responsible bidder for procurements up to \$100,000 when a remedial procurement plan is established in accordance with guidelines proscribed by DMBE (see 3.10 f.).
6.5 b.	The procedure for Two-Step Competitive Sealed Bidding is revised to allow award to a reasonably priced minority or women-owned bidder other than the lowest priced bidder when a remedial procurement plan is established in accordance with guidelines proscribed by DMBE.
6.6	The procedures for Combined Two-Step Competitive Sealed Bidding is revised to allow award to a reasonably priced minority or women-owned bidder other than the lowest priced bidder for procurements up to \$100,000 when a remedial procurement plan is established in accordance with guidelines proscribed by DMBE.
Annex 6-B	The IFB step-by-step procedures are revised in Step Four, C. changing the posting requirement for sealed bids from \$30,000 to \$50,000. Step Twelve is revised to indicate the use of a Notice of Award or an eVA Order as appropriate as an award document. It states that Awards over \$50,000 shall be posted on the DGS/DPS eVA web site.
7.2 g.	Competitive Negotiation competition requirements are revised to require soliciting at least six (6) valid sources, including a minimum of four (4) minority or women-owned businesses, if available.
7.4 a.	The section on Negotiation and Award of RFPs allows the award of a contract to a reasonably ranked minority or woman-owned offeror that is other than the highest ranking offeror for procurements up to \$100,000 when such purchases are made under a remedial procurement plan established in accordance with guidelines proscribed by the DMBE.
7.5 i.	Best Value Acquisition competition requirements are revised to require soliciting at least six (6) valid sources, including a minimum of four (4) minority or women-owned businesses, if available.
7.5 m.	Best Value Acquisition awards may be made to a reasonably ranked minority or woman-owned offeror that is other than the highest ranking offeror for procurements up to \$100,000 when such purchases are made under a remedial procurement plan established in accordance with guidelines proscribed by the DMBE.

Annex 7-B	The Competitive negotiation step-by-step procedures are revised in Step Three, III, and IV to eliminate the reference to posting requirements under \$50,000. Step 16 – Award Contract, is revised to require awards over \$50,000 to be posted on the DGS/DPS eVA web site.
8.	Sole source requirements are revised to require a written quotation to be obtained from the vendor for purchases exceeding \$5,000.
8.5	This section on posting requirements is revised to state that for sole source procurements over \$50,000, notices must be posted on eVA and at a minimum state that only one source was determined to be practicably available and must also state that which is being procured, the contractor selected, and the date on which the contract was or will be awarded.
8.6	8.6 on Award Documents is revised to delete posting requirements for sole source procurements in this section.
Annexes 6-A, 7-A, 8-A, 8-B, and 9-A	The process flow charts for Competitive Sealed Bidding (Annex 6-A) and Competitive Negotiation (Annex 7-A) are revised to reflect the new competition thresholds and solicitation requirements contained in Chapters 6 and 7. The Sole Source procurement flow chart (Annex 8-A) is revised to require a written quote over \$5,000. The Sole Source Checklist (Annex 8-B) is revised to show that sole source awards must be posted for purchases over \$50,000. The Emergency Procurement flow chart (Annex 9-A) deletes reference to documenting a contractor's license number under \$15,000. The license number should be noted at all dollar levels.
9.3 b.	Documentation for emergency procurement is revised to require posting a notice of sole source award on the eVA website over \$50,000.
14.5 e.	The sub-section title, Quick Quote (over \$5,000 to \$15,000) is revised to show the threshold limit is increased to over \$5,000 to \$50,000. It requires solicitation of a minimum of four (4) valid sources; including two (2) minority or women-owned businesses, if available. The revision includes that the award may be made to a reasonably priced minority or woman-owned bidder that is other than the lowest priced bidder when such purchases are made under a remedial procurement plan established in accordance with guidelines proscribed by the DMBE.
14.5 f.	Deleted.
14.5 h.	The last sentence of this section adds, “Charge card purchases shall be processed through eVA unless the purchase is made over the counter at the site of the sale and picked up by the individual card holder, as exempted from processing through eVA in 14.9b 17.”
14.12	The first paragraph of 14.12 on Self-Certification and Fees For Non-Compliant Purchase Transactions is changed to allow the agency or institution purchasing director, chief financial officer, or authorized designee(s) to electronically sign and certify the Dashboard Report on behalf of the entity. It provides that AMEX purchases can be aggregated and reported as a single report line item.
Annex 14-B	Deleted. The reference to the Self-Certification and Fees For Non-Compliant Purchase Transactions form previously shown as Annex 14-B is deleted from the cover page of Chapter 14 and from the Annex. This form may be completed via a password protected electronic dashboard available on the eVA website.
Appendix A	Definitions are added or changed in Appendix A for Minority-Owned Business Enterprise, Minority Individual, Small Business Enterprise, Woman-Owned Business Enterprise, and Disadvantaged Business Enterprise.

Appendix B, Section I, J. 3.	The General Term & Condition J. on Payment adds a new sub-section 3. on payment to Subcontractors requiring each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, to deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance with the SWAM procurement plan.
Appendix B, Section I, U.	The Announcement of Award general term “When Used” guidance is revised to indicate inclusion of the term in all solicitation over \$50,000. Wording of the general term remains unchanged.
Appendix B, Section II, 7. Award Clauses	Award clause H. on unsealed best value acquisition is revised to allow award to a reasonably ranked minority or women owned offeror, other than the highest ranking offeror, when such purchases are made under a remedial procurement plan established in accordance with guidelines proscribed by the Department of Minority Business Enterprise (DMBE). Award clause I. on Best Value Acquisition awards is revised to allow awards to a reasonably ranked minority or women owned offeror, other than the highest ranking offeror, in BVA solicitations up to \$100,000. New Clauses J. and K. address award to a reasonably priced minority or women-owned bidder, other than the lowest priced bidder, in IFBs and award of a contract to a reasonably ranked minority or woman-owned offeror, that is other than the highest ranking offeror, for procurements up to \$100,000.
Appendix B, Section II, 36.	The special term and condition on Minority/Women-Owned Businesses Subcontracting and Reporting is revised. The title is revised and is, Small, Women, And Minority-Owned Businesses Subcontracting And Evidence Of Compliance. One of two paragraphs may be selected, A) to encourage use of SWAM subcontractors and reporting of use of SWAM subcontractors to the purchasing office, and B) the use of SWAM subcontractors as a condition of the award and providing evidence of compliance with the prime contractors’ SWAM procurement plan.

Changes to each of the chapters, appendices, index, and changes to the searchable whole *APSPM* version will be made within the next few days on the eVA website, under Quick Links –*APSPM* Manual or after log in, under Reports and Documents, Policies-Manuals-Offices, then *APSPM*.

To print a hard copy of the manual, save the chapters and appendices to your hard drive or network and print from there. Printing directly from the website will result in lost formatting. Use the “whole *APSPM*” for text searches. If you should have questions about the changes, please contact Nancy M. Davis at 804-786-0323 or ndavis@dgs.state.va.us.

Changes to the APSPM:

- Annex 1-A** Agency Standards for Increased Delegated Procurement Authority, Purchasing Program Standards under VBO advertising is changed:
 Virginia Business Opportunities (VBO) Advertising. An agency must advertise all procurements that exceed \$50,000 (goods, services, or construction) in the VBO on the eVA web site (www.eva.state.va.us).

3.10 **Small, Women-Owned & Minority Businesses.**

- a. **Agency Plans.** Each agency and institution of the Commonwealth shall adopt an annual SWAM (Small, Women and Minority-owned businesses) Procurement Plan that will specify that agency's or institution's plans and goals for SWAM procurement in accordance with the memorandum on SWAM Procurement, dated July 30, 2004, from the Governor's Chief of Staff. Agencies shall establish internal procedures consistent with the provisions of the VPPA and this manual to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions (*Code of Virginia*, § 2.2-4310B). The procedures shall be in writing and shall include cooperation with the Department of Minority Business Enterprise (DMBE), the United States Small Business Administration, and public or private agencies.
- b. **Certified Vendors.** Beginning October 1, 2004, for the purposes of state procurement rules, no vendor shall be considered a Small Business Enterprise, a Minority-Owned Business Enterprise or a Women-Owned Business Enterprise, or be entitled to the benefits of the state SWAM procurement opportunities, unless certified as such by the Commonwealth. Definitions for Minority-Owned Business Enterprise, Minority Individual, Small Business Enterprise, Women-Owned Business Enterprise, and Disadvantaged Business Enterprise are found in Appendix A.
- c. **Contract Sizing.** The size of a proposed procurement can limit the potential participation by SWAM vendors. The following rules are designed to address that issue, while being sure to preserve the cost-savings and other benefits that the Commonwealth has achieved through bundling contracts and other procurement initiatives.
 1. **Assessing Bundled Contracts.** For goods provided under statewide or regionally bundled contracts for which there are qualified available SWAM vendors, but with respect to which the size of such contract appears to limit SWAM vendors from bidding or winning such contracts, the contracting agency or institution shall seek to reduce the size of the contracts to increase the pool of potential bidders to include SWAM vendors. If the effect of reducing the size of such contracts is to cause a meaningful increase in price, a significant degradation in terms and conditions, a significant decrease in administrative efficiency or non-compliance with applicable federal contracting requirements or funding conditions, then the contracting agency or institution shall not be obligated to so reduce the contract size.
 2. **Prime Contractor SWAM Procurement Plan.** Any contracting agency or institution that has established a SWAM Procurement Plan with identified goals for minority and women-owned business procurement, may include those goals as conditions as pre-qualification requirements in the terms and conditions for the award of any prime contract in excess of \$100,000 and, if so included, may reflect those goals in the requirement for a subcontracting plan prepared and submitted prior to award for goods and non-professional services and within 30 days of award for construction and professional services. For contracts in which the subcontractor plan is due prior to award, failure to submit the plan in timely fashion shall disqualify the contractor from receiving the award. For contracts in which the subcontractor plan may be submitted within 30 days after award, failure to submit the required plan in timely fashion, including any applicable cure periods, shall be cause for contract termination or other appropriate remedies (including the obligation on the part of the contractor to continue full contract performance notwithstanding the withholding of progress payments until the required plan is submitted). A Virginia-certified minority or women-owned contractor who serves as prime contractor will receive credit for minority or women-owned subcontracting for work performed by such prime. See Appendix B, Section II, 36. for the special term and condition that may be included in solicitations requiring the contractor to provide evidence of compliance with this requirement.
- d. **Consultation with DMBE** Each contracting agency or institution, in consultation with DMBE where practical, shall seek to identify those purchases in which contract sizing may influence the availability of purchasing opportunities to SWAM vendors (a "Size-Related Contract"). Where these purchases are identified, the agency shall determine whether there are minority or women-owned vendors capable of meeting the purchasing requirements. If the agency identifies no minority or women-owned vendors capable of performing the contract requirements, then the agency shall consult with DMBE to seek to identify available

vendors unless contract timing issues require the agency or institution to complete the contract process before DMBE input can be obtained. For any Size-Related Contract for which the agency or institution determines that contract timing issues require contract award without identifying any minority or women-owned vendors or consultation with DMBE, the agency or institution shall consult with DMBE promptly after award of the contract to develop potential minority or women-owned vendors for the next similar procurement.

- e. **Competitive Requirements.** All employees with purchasing responsibility who are involved in procurement decisions for goods and services are expected to notify and give every consideration to using qualified, small, women-owned and minority (SWAM) suppliers in a manner that is consistent with state and federal laws and regulations. Whenever the agency or institution engages in a solicitation or request for quotes, it will include enterprises selected from the list of certified minority business enterprises (MBE) maintained on the DMBE web site, www.dmb.state.va.us. Where there is adequate registration in the commodity:

- (1) Quotes up to \$5,000 shall be solicited from a minimum of one (1) minority or women-owned business.
- (2) Solicitations over \$5,000 to \$50,000, solicit four (4) sources, including a minimum of two (2) minority or women-owned businesses.
- (3) Solicitations over \$50,000, solicit six (6) sources, including a minimum of four (4) minority or women-owned business. Sealed bids or proposals shall include businesses selected from a list made available by the Department of Minority Business Enterprise (*Code of Virginia*, § 2.2-4310A), and they shall be identified as minority vendors on the vendor mailing list.

If adequate registration in the commodity required is not available, document the procurement file with the efforts made to include the appropriate number of SWAM businesses. Solicitation of SWAM-owned businesses should not be construed as authorizing or directing the exclusion of non-SWAM-owned businesses; rather, the purpose is to include as many qualified businesses as possible.

- f. **Award to Other than the Lowest Priced Bidder or Highest Ranking Offeror.** Procurements up to \$100,000 that require solicitation of multiple vendors may be awarded to a reasonably priced or reasonably ranked minority or woman-owned bidder or offeror that is other than the lowest priced bidder or highest ranking offeror when such purchases are made under a remedial procurement plan established in accordance with guidelines proscribed by the DMBE.

3.18

Publicly Posted Notices. All solicitation, addenda and award actions (including emergency and sole source awards) over \$50,000 shall be posted on the DGS single electronic procurement web site (*Code of Virginia*, § 2.2-4301). The designated web site is www.eva.state.va.us. Notices shall be posted on the eVA web site under VBO Ads. Awards shall be posted on the Awards page. Once the advertisement has been created and the solicitation uploaded, the advertisement will be available for viewing within one (1) business day. The agency must post the solicitation notice on the eVA web site and include access to an electronic version of the solicitation. Public notices may also be posted under \$50,000 and in other locations, such as notice boards, or web sites; however, sufficient time should be allowed if advertising procurements under \$50,000 to allow adequate time for competition. The eVA web site provides instructions on posting solicitation and award notices.

- a. Written solicitation notices up to \$50,000 are not required to be posted. Sufficient time should be established in the solicitation for receipt of Quick Quotes, unsealed bids or unsealed proposals.
- d. Award Notices over \$50,000 must be posted for a ten (10) day period immediately following the actual time of award. If used, the Notice of Intent To Award must be posted ten days prior to the actual time of award (see also 4.12d). Emergency notices must state that the contract is being issued on an emergency basis while sole source notices must state that only one source was determined to be practicably available and both must also state that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. Routine award notices may be a copy of the bid tabulation sheet revealing bidders prices and indicating the bidder receiving the award. IFB and RFP solicitations must contain the General Term and Condition on Announcement of Award (see Appendix B, Section I. U.). The award notice shall be posted on the eVA web site and in any additional locations as prescribed in the solicitation for a ten (10) day period immediately following the actual time of award (*Code of Virginia*, § 2.2-4360).

NOTE: The procurement records must be available for review by any bidder or offeror at the time a Notice of Intent To Award or an Award Notice is posted.

Annex 3-B**Summary of Procurement Policies****I. Small Purchases - Goods and Services, other than Professional Services**

Thresholds	Procedures
Up to \$5,000	Solicit a minimum of one (1) quote from a minority or women-owned business. (Use of the Small Purchase Charge Card is encouraged up to \$5,000.)
Over \$5,000 to \$50,000	Solicit a minimum of four (4) valid sources, including a minimum of two (2) minority or women-owned businesses in writing or electronically. Use Quick Quote for bids or quotes from \$5,000 to \$50,000. Advertising in the <i>Virginia Business Opportunities (VBO)</i> on the eVA web site (www.eva.state.va.us) is required over \$50,000 for goods and services.

II. Competitive Sealed Bidding or Competitive Negotiation (Code of Virginia, § 2.2-4301 and §2.2-4303)

Threshold	Procedures
Over \$50,000; may be used for lesser amounts.	Solicit a minimum of six (6) valid sources, including a minimum of four (4) minority or women-owned businesses, in writing, including electronically through eVA. Use one of the following methods: 1 - Competitive sealed bidding. 2 - Two-step competitive sealed bidding. 3 - Competitive negotiation. A written justification is required for use of #3. Required for purchases over \$50,000 unless an exception (see III. below).

III. Exceptions To Competitive Procurement (Code of Virginia, § 2.2-4303 E and F)

Thresholds	Procedures
Emergency (See Chapter 9)	Take immediate action if required to protect personal safety or property. Other emergencies, seek competition to the extent practicable. Requires written determination signed by the agency/institution head or designee.
Sole Source (Unlimited dollar amounts) (See Chapter 8)	Over \$5,000, a written quotation must be obtained from the vendor. Requires written justification approved in advance by the agency/institution head. Over \$50,000 requires approval from DGS/DPS. Agencies and institutions may make contract awards after appropriate approval. Purchase using noncompetitive negotiation.
Used Equipment up to \$50,000	Competition not required. See 1.5c & 4.17.

IV. Exemption from Purchasing through DGS/DPS

Thresholds	Procedures
Various	See 1.5.

Note: Public posting required for all solicitation and award actions exceeding \$50,000 (see 3.18).

5.1 **Competitive Requirements.**

- a. **Oral or Written.** Purchases of goods or services up to the single quote limit, requires soliciting orally or in writing, a minimum of one valid minority or women-owned business source, if available. Additional sources may also be solicited.
- b. **Written.** Purchases over \$5,000 and up to the small purchase dollar threshold of \$50,000 require soliciting at least four (4) valid sources, including a minimum of two (2) minority or women-owned businesses, if available, in writing (see 3.18, Publicly Posted Notices). Estimate the total cost, including all possible renewal periods if a term contract, to determine if the procurement will not exceed \$50,000. The expected trade-in value of equipment shall not be considered when determining the anticipated total value of a contract. If fewer than the required number of sources are solicited, the reasons shall be documented.

5.2 **Charge Cards for Small Purchases.** In an effort to streamline purchasing and invoice processing steps and sharply reduce paperwork, the Commonwealth has established a contract allowing agencies and institutions to use charge cards for transactions to \$5,000 for the purchase of maintenance, repair and operating (MRO) supplies and services as well as for placing orders against DGS/DPS Term Contracts (see flowchart, Annex 5-B). Unlike the typical consumer charge card, this program incorporates the features of corporate charge cards - a new national concept designed for business applications. Major program benefits include the elimination of invoices submitted to Commonwealth agencies and institutions, reduction in internal requisitioning and purchase order processing steps, reduced vendor collection costs, and payment to the vendor by the charge card company within as little as three business days. As a cost cutting endeavor, agencies are strongly encouraged to participate. Information can be obtained by calling DGS/DPS at 804-786-1074 or DOA at 804-371-7804. Charge card purchases shall be processed through eVA unless the purchase is made over the counter at the site of the sale and picked up by the individual card holder, as exempted from processing through eVA in 14.9b 17.

5.3. **Single Quotation.** (Up to \$5,000)

- a. Where the agency's estimated cost of goods or nonprofessional services is \$5,000 or less, purchases may be made upon receipt of a minimum of one (1) written or telephone (oral) quotation (see flowchart, Annex 5-C) from a minority or women-owned business. Additional sources may also be solicited. To avoid allegations of collusive or other related fraudulent practices, a record of the quotation must be kept with the file. If a telephone quote is solicited, a record shall be kept of the name and address of the vendors contacted, the item description or service offered, price quoted, delivery dates and F.O.B. point, names of persons giving and receiving the prices and the date the information was obtained. Notation on the requisition form is considered to be an adequate record or see Annex 5-G, and 5H, for copies of sample forms to use in recording information. If more than one quote is solicited, the award will be made to the lowest responsive and responsible bidder. When using charge cards, quotes should be obtained whenever possible; however, this may not always be practical in pick-up or over-the-counter sales situations.

5.4 Deleted.

5.5 Deleted. Annex 5-D on the Four Quotation Process is deleted.

5.6 **Unsealed Bidding.** (Over \$5,000 to \$50,000)

- a. Quick Quote shall be used to solicit bids or quotes for goods and nonprofessional services from \$5,000 to \$50,000 (see 14.5f). Any appropriate special conditions must be stated in or attached to the Quick Quote.
- b. Solicit four (4) valid sources, including a minimum of two (2) minority or women-owned businesses, if available. If fewer than the required number of sources are solicited, the reasons shall be documented.
- c. VBO advertising is not required under \$50,000 (see 3.18).
- d. Previous section 5.6 d. is deleted and replaced by previous section 5.6 f. which is now renumbered as 5.6 d.

- e. Deleted.
- d. Evaluate and award. The award may be made to a reasonably priced minority or woman-owned bidder that is other than the lowest priced bidder when such purchases are made under a remedial procurement plan established in accordance with guidelines proscribed by the Department of Minority Business Enterprise (DMBE).

5.7 a. **Unsealed Proposals** (Over \$5,000 to \$50,000).

Agencies and institutions may obtain required goods or nonprofessional services using an informal Request for Proposals up to \$50,000 (see flowchart, Annex 5-F). Unsealed proposals for professional services may be solicited by faxback or informal Request for Proposals up to \$30,000 (see Annex 5-I for Faxback form). A written determination for the use of competitive negotiation is not required for unsealed or informal RFPs. The solicitation should include a cover sheet, a general description of what is being sought, the factors and weights to be used in evaluation, the Commonwealth's General Terms and Conditions (either in full or by reference), and any special terms and conditions including unique capabilities or qualifications that will be required.

- 1. Solicit four (4) valid sources, including a minimum of six two (2) minority or women-owned businesses, if available, by mail, fax, or electronically.
- 4. In lieu of an evaluation committee, the buyer or end user may solely evaluate and rank offers. Upon completion of the evaluation, negotiations shall be conducted with the offerors selected. An award may be made to a reasonably ranked minority or woman-owned offeror that is other than the highest ranking offeror when such purchases are made under a remedial procurement plan established in accordance with guidelines proscribed by the DMBE.

b. **Unsealed Best Value Acquisition** (Over \$5,000 to \$50,000).

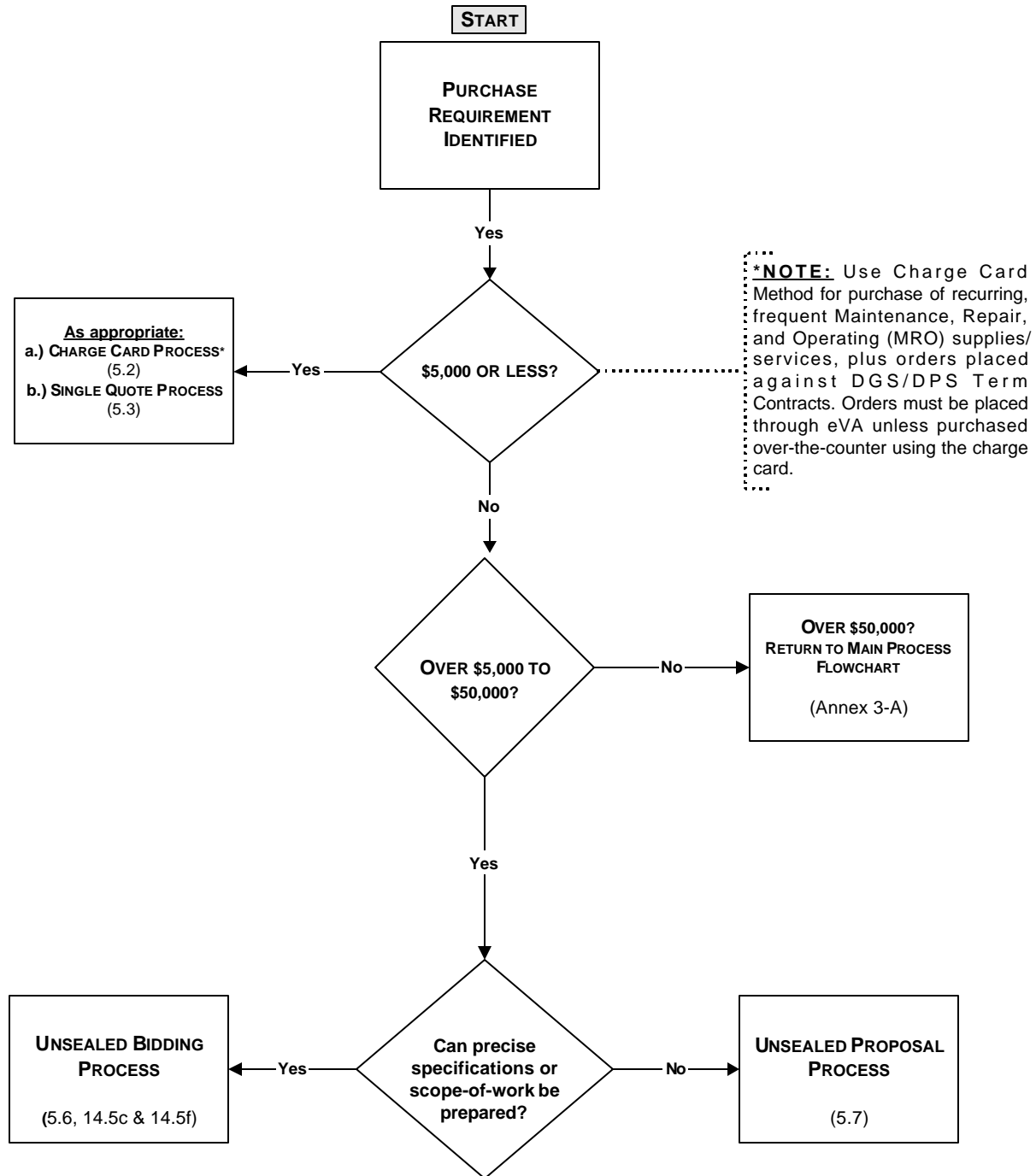
Agencies and institutions may obtain required goods or nonprofessional services using best value concepts. A written determination for the use of competitive negotiation is not required for unsealed Best Value Acquisition.

- 8. Solicit four (4) valid sources, including a minimum of two (2) minority or women-owned businesses, if available, by mail, fax or electronically. If fewer than the required number of sources are solicited, the procurement file must contain a statement as to the efforts made to obtain the required number of sources. *VBO* advertising on eVA is not required up to \$50,000.
- 11. Award. The award will be made to the responsible Offeror(s) whose proposal, conforming to the solicitation, is the most advantageous and represents the Best Value to the Commonwealth, costs and other factors considered. The award may be made to a reasonably ranked minority or woman-owned offeror that is other than the highest ranking offeror when such purchases are made under a remedial procurement plan established in accordance with guidelines proscribed by the DMBE. Prepare a written justification and place in contract file.

Annex 5 - A

SMALL PURCHASE PROCEDURES (CODE OF VA § 2.2-4303G)

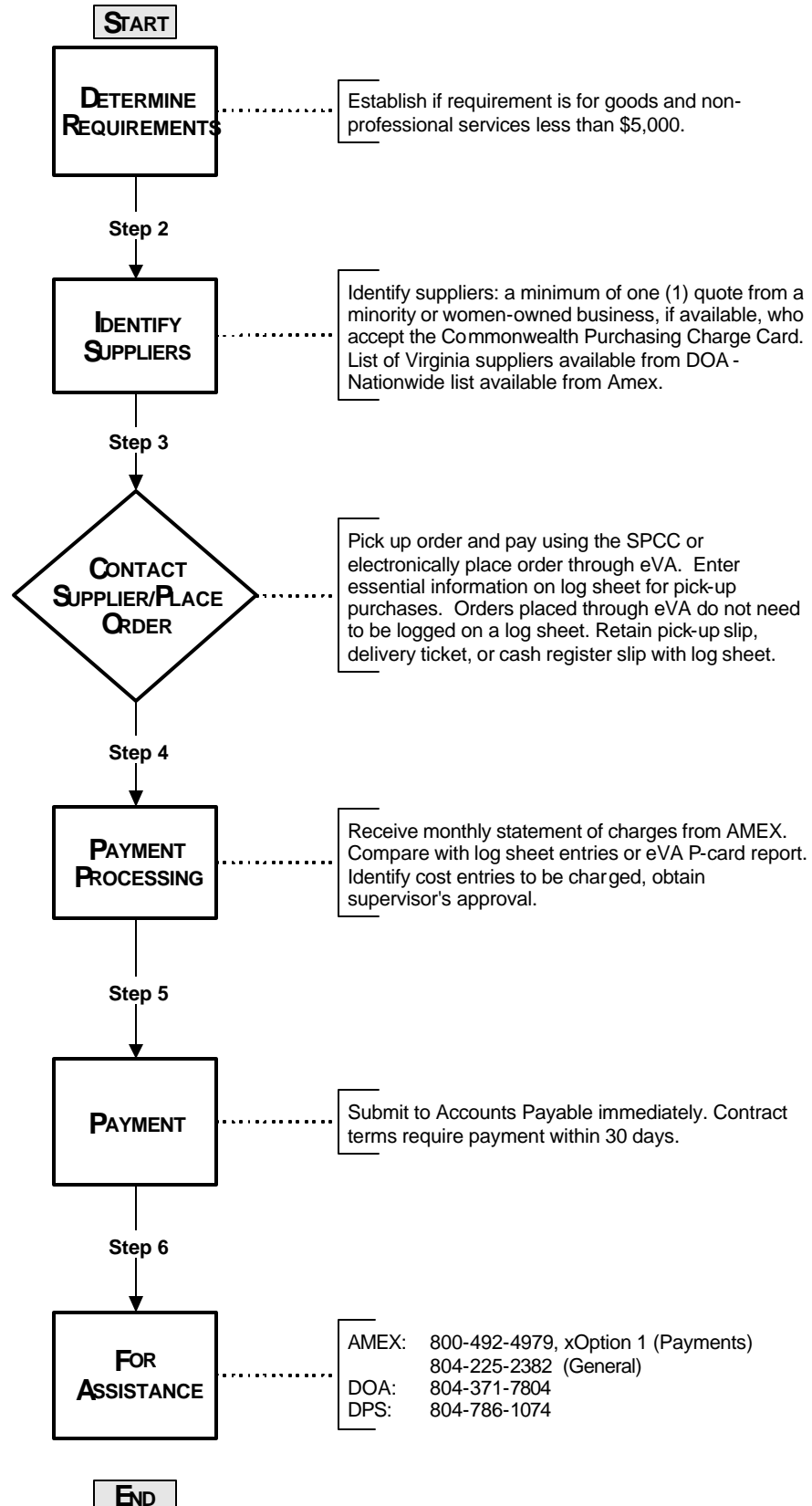
Small Purchase Process (goods and nonprofessional services up to \$50,000)



Annex 5 -B

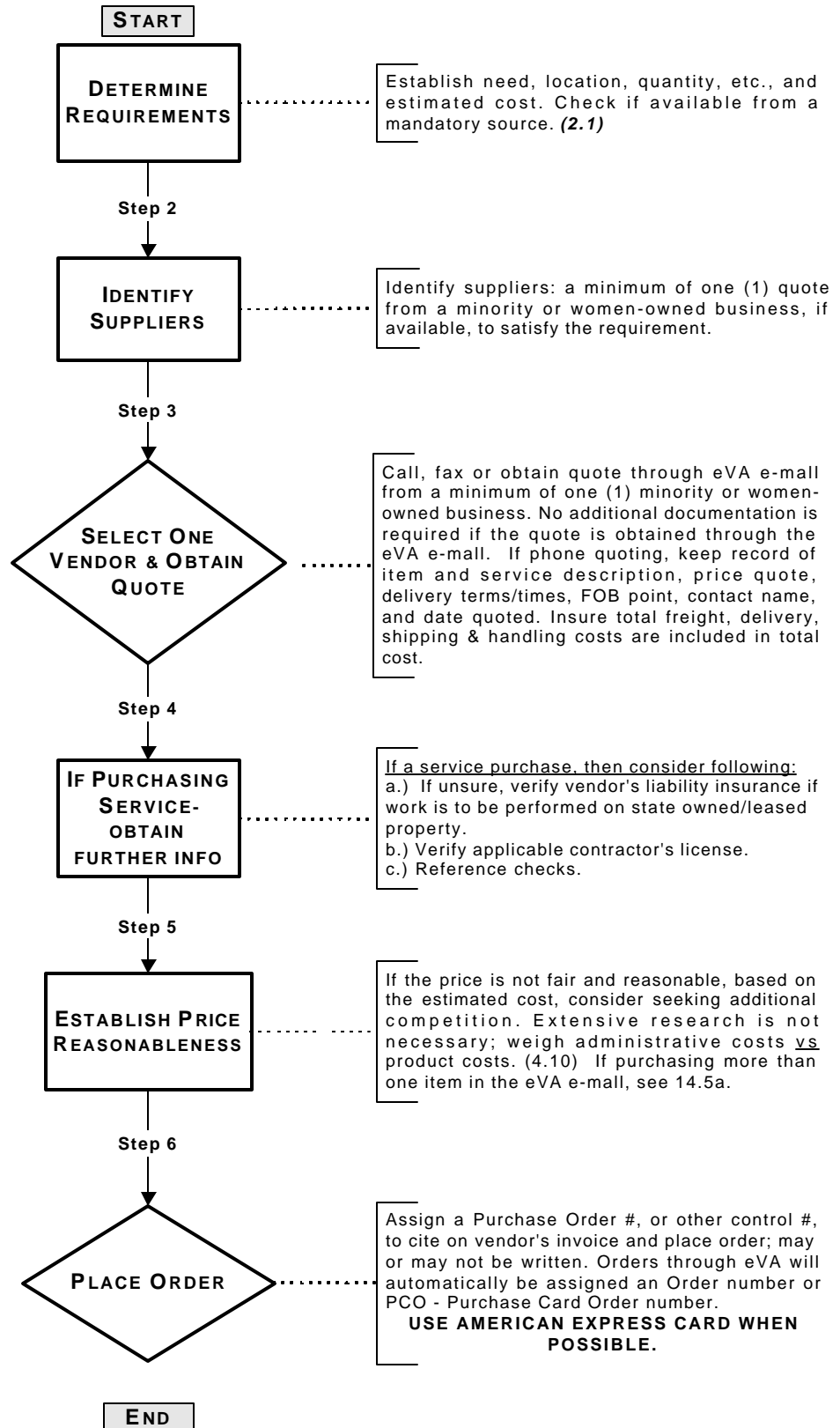
CHARGE CARD PROCESS

For Goods and Non-professional Services to \$5,000



Annex 5-C

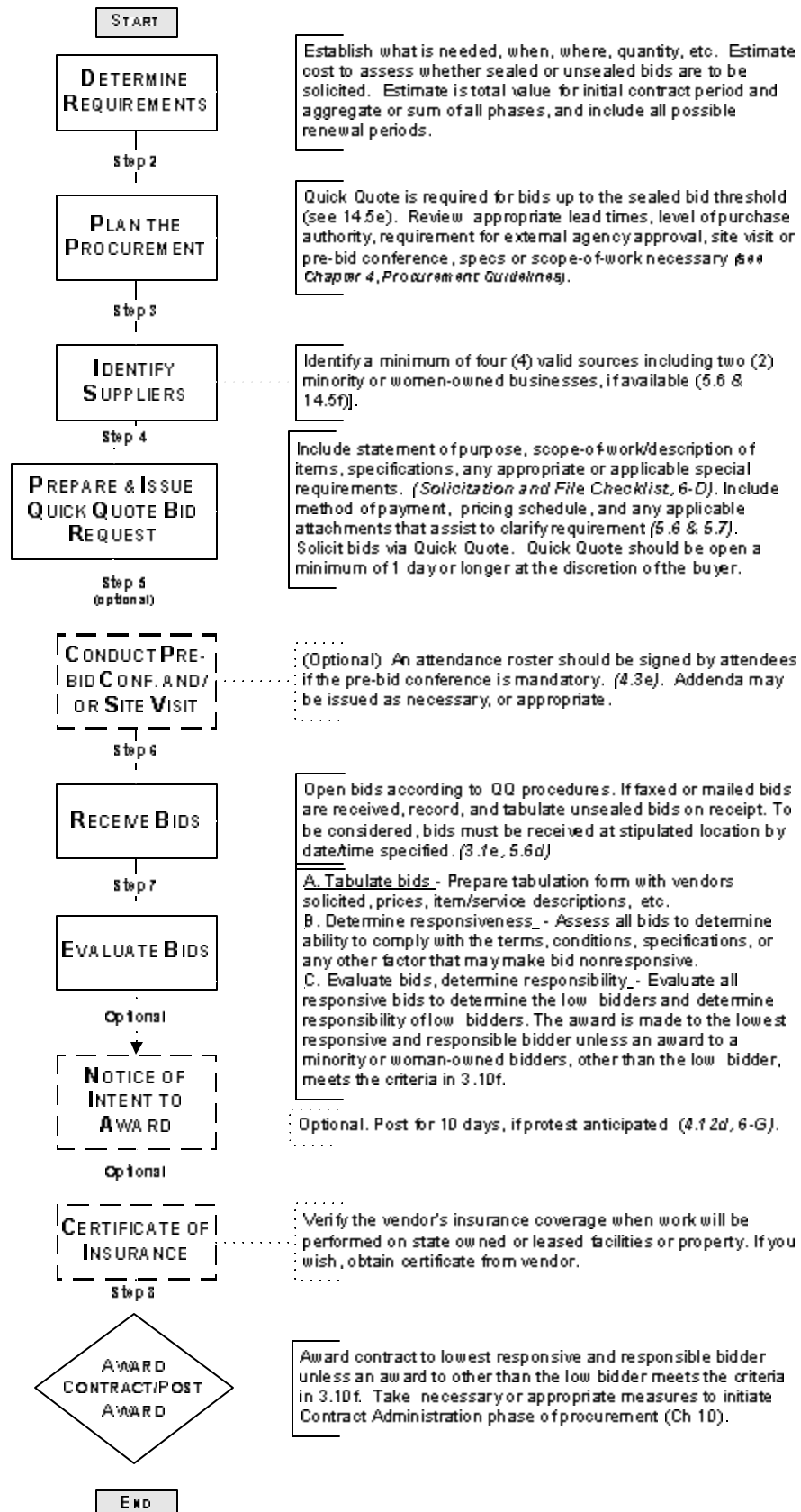
SINGLE QUOTATION PROCESS For Goods and Non-professional Services to \$5,000



Annex 5 -E

UNSEALED BIDDING PROCESS

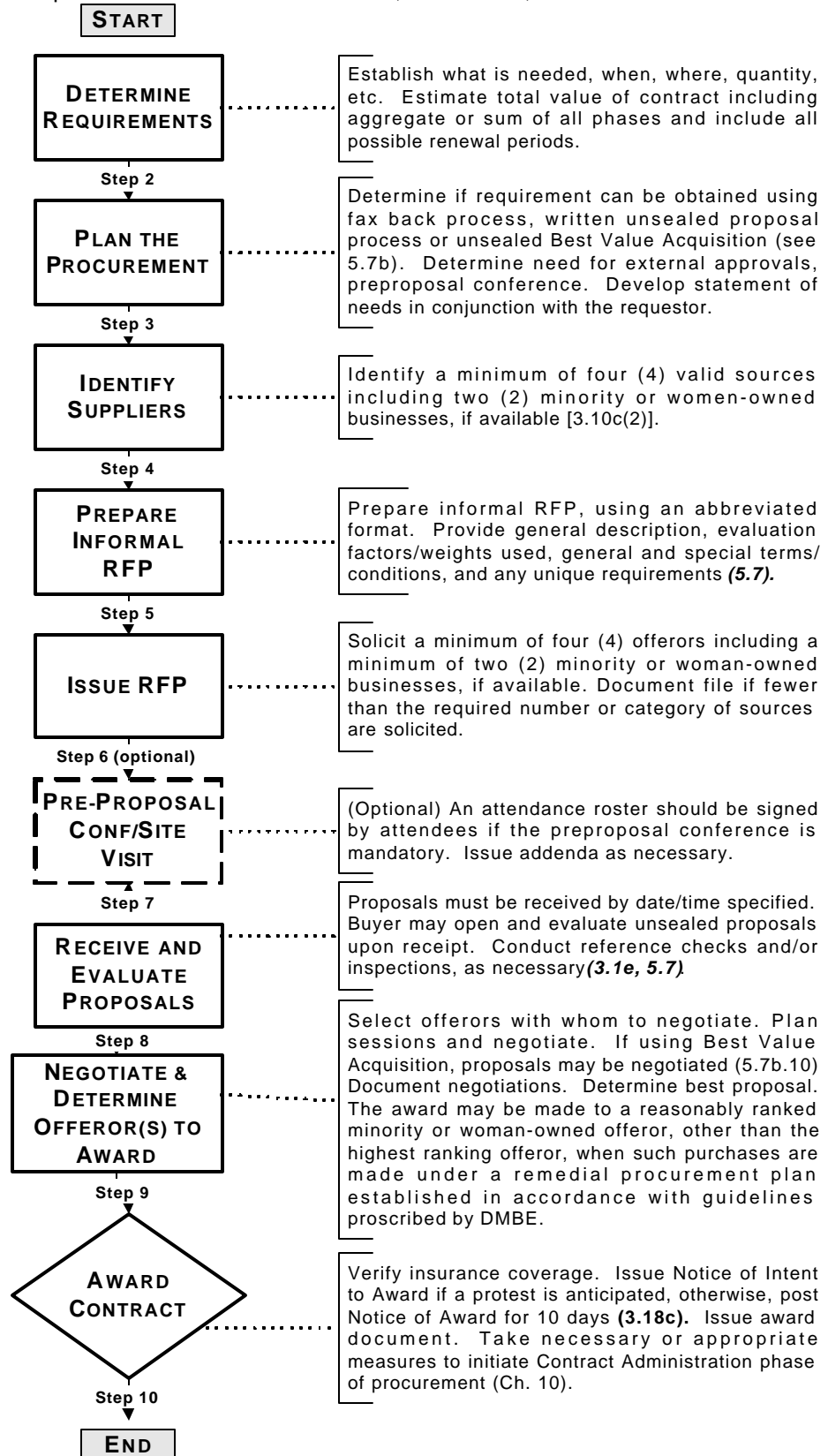
For Goods and Non-professional Services over \$5,000 to \$50,000



Annex 5 -F

UNSEALED PROPOSAL PROCESS

For Goods and Non-professional Services over \$5,000 to \$50,000



Updated procurement method flow charts follow changes to Chapters 6, 7, 8 and 9.

- 6.1 **Competitive Sealed Bidding.** The goods or service to be procured when using this method must be capable of being described so that bids submitted by potential contractors can be evaluated against the description in the Invitation for Bids (IFB) and an award made to the lowest responsive and responsible bidder; however, if the contract is up to \$100,000, an award may be made to a reasonably priced minority or woman-owned bidder that is other than the lowest priced bidder when such purchases are made under a remedial procurement plan established in accordance with guidelines proscribed by the Department of Minority Business Enterprise (DMBE).
- 6.2 **Preparation and Issuance of IFBs**
- e. **Sources.** Solicit at least six (6) valid sources, including a minimum of four (4) minority or women-owned businesses, if available. If fewer than the required number of sources are solicited, the reasons must be documented in writing and placed in the purchase file.
- 6.3 c. **Evaluation.** The lowest responsive bidder is then evaluated to determine if the firm is responsible (see 3.20).
- d. **Award.** The contract is awarded to the lowest responsive and responsible bidder (see 3.21) unless a remedial procurement plan is established in accordance with guidelines proscribed by DMBE, then the award, up to \$100,000, may be made to a reasonably priced minority or woman-owned bidder that is other than the lowest responsive and responsible bidder (see 3.10 f.).
- 6.5 **Procedure for Two-Step Competitive Sealed Bidding.**
- b. **Step Two.** Prepare an IFB to include a pricing schedule, reference the request for technical proposal title and number, and set a specific date and time for receipt of sealed bids. A public opening is held. Bids are evaluated, and the contract is awarded to the lowest responsive and responsible bidder unless a remedial procurement plan is established in accordance with guidelines proscribed by DMBE, then the award, up to \$100,000, may be made to a reasonably priced minority or woman-owned bidder that is other than the lowest responsive and responsible bidder (see 3.10 f.). The award document shall incorporate by reference the terms and conditions of the solicitation, the contractor's technical proposal, and the bid price.
- 6.6 **Combined Two-Step Competitive Sealed Bidding.** The two steps can be combined by requiring the firms who respond to the solicitation to furnish their unpriced technical proposals in one sealed envelope and their bid prices in a second sealed envelope at the same time. The instructions issued must specify that the responses are to be submitted in two separate sealed envelopes - one marked "Technical Proposal" and the other "Bid Price." If the solicitation is a combined two-step IFB, the bidders should be instructed to identify both the technical proposal and pricing envelope with the bidder's name, company name and address, and bid reference number. The technical proposals are opened and evaluated as described in 6.5a, then only the price envelopes for those technical proposals selected as acceptable are opened. The award is made to the lowest responsive and responsible bidder unless a remedial procurement plan is established in accordance with guidelines proscribed by DMBE, then the award, up to \$100,000, may be made to a reasonably priced minority or woman-owned bidder that is other than the lowest responsive and responsible bidder (see 3.10 f.). The award document will incorporate by reference the terms and conditions of the solicitation and include the contractor's technical proposal and the bid price. The envelopes containing the bid price for those proposals determined to be not acceptable will be returned unopened.

Annex 6-B Step-by-step IFB Procedures, Step Four, C:

VIRGINIA BUSINESS OPPORTUNITIES (VBO): If the estimated total value of the pending procurement transaction exceeds \$50,000, advertise in the *VBO*. This may require a longer solicitation period (see 3.18). Quick Quote is required to be used for purchases over \$5,000 to \$50,000 and is not required to be advertised or posted on the *VBO*.

Step-by-step IFB Procedures, Step Twelve:

AWARD CONTRACT: Use Notice of Award (see Annex 6-H) or an eVA Order, as appropriate. Awards over \$50,000 shall be posted on the DGS/DPS eVA web site (see 3.18).

- 7.2 g. For the purchase of material, equipment, supplies or nonprofessional services estimated to cost \$50,000 or more, RFPs shall be sent to at least six (6) valid sources, including a minimum of four (4) minority or women-owned businesses, if available. If fewer than the required number of sources are solicited, the reasons must be stated in writing and placed in the purchase file.

7.4 **Negotiation and Award.**

- a. Negotiations are conducted with each of the offerors so selected. Negotiation allows modification of proposals, including price. Offers and counter-offers may be made as many times with each offeror as is necessary to secure a reasonable contract. After negotiations have been conducted with each of the selected offerors, the Commonwealth selects the offeror which, in its opinion, has made the best proposal; however, if the contract is up to \$100,000, the contract may be awarded to a reasonably ranked minority or woman-owned offeror that is other than the highest ranking offeror when such purchases are made under a remedial procurement plan established in accordance with guidelines proscribed by the Department of Minority Business Enterprise (DMBE). In all cases, written confirmation shall be obtained from the offeror on any modifications of the original proposal. Once an Intent to Award notice is posted, no further negotiation shall be conducted.

7.5 **Best Value Acquisition (over \$50,000)**

- i. Solicit six (6) valid sources, including a minimum of four (4) minority or women-owned businesses, if available, by mail, fax or electronically, and publicly post a copy of the solicitation on the DGS/DPS eVA web site www.eva.state.va.us. If fewer than the required number of sources are solicited, the procurement file must contain a statement as to the efforts made to obtain the required number of sources. VBO advertising is required. In addition to advertising in the VBO, BVAs over \$50,000 shall be advertised in a newspaper of general circulation in the area in which the contract is to be performed.
- m. Award. The award will be made to the responsible Offeror(s) whose proposal, conforming to the solicitation, is the most advantageous and represents the Best Value to the Commonwealth, costs and other factors considered. An award, up to \$100,000, may be made to a reasonably ranked minority or woman-owned offeror that is other than the highest ranking offeror when such purchases are made under a remedial procurement plan established in accordance with guidelines proscribed by the DMBE. Prepare a written justification and place in contract file. Post a Notice of Award or Notice of Intent to Award in the manner prescribed in the solicitation as required in 3.18.

Annex 7-B Step-by-step RFP procedures,:

Step Three, III. **VIRGINIA BUSINESS OPPORTUNITIES (VBO)**: Advertise in the VBO if the estimated total value of the pending procurement transaction is over \$50,000 for goods, services, or construction. See section 3.18.

Step Three, IV. **PUBLIC POSTING AND ADVERTISING**: A RFP over \$50,000 must be publicly posted on the DGS/DPS eVA web site under VBO Ads. Agencies may also post on a designated bulletin board where the general public has access to it. **If it is over the small purchase limit (\$50,000) both posting and newspaper advertising are required** (see 3.18).

Step 16 – AWARD CONTRACT: The preferred instrument of award for a competitively negotiated contract is the Standard Contract Form (see Annex 7-D). Awards over \$50,000 must be posted on the DGS/DPS eVA web site.

8. **Definition.** A sole source procurement is authorized when there is only one source practicably available for the goods or services required. Competition is not available in a sole source situation; thus distinguishing it from a proprietary purchase where the product required is restricted to the manufacturer(s) stipulated, but is sold through distributors and competition between them can be obtained. Sole source justification based solely on a single vendor's capability to deliver in the least amount of time is not appropriate since availability alone is not a valid basis for determining a sole source procurement. Note: For sole source requirements exceeding \$5,000, a written quotation must be obtained from the vendor.

- 8.5 **Posting Requirements.** For sole source procurements over \$50,000, award notices must be posted on eVA and at a minimum state that only one source was determined to be practicably available and must also state that which is being procured, the contractor selected, and the date on which the contract was or will be awarded (see 3.18 for additional guidance). See Annex 8-E for the proper form.
- 8.6 **Award Document.** Agencies must issue an award document (PO or contract) for sole source purchases in accordance with the provisions of Chapter 14. When a quote has been obtained from the vendor and no further negotiations are needed, a purchase order is acceptable. When complicated negotiations have been involved, it may be in the agency's best interest to use the Commonwealth of Virginia Standard Contract form found in Annex 8-D.

Annex 8-B, SOLE SOURCE CHECKLIST, item 5:

Sole source notice of award posted for purchases over \$50,000.

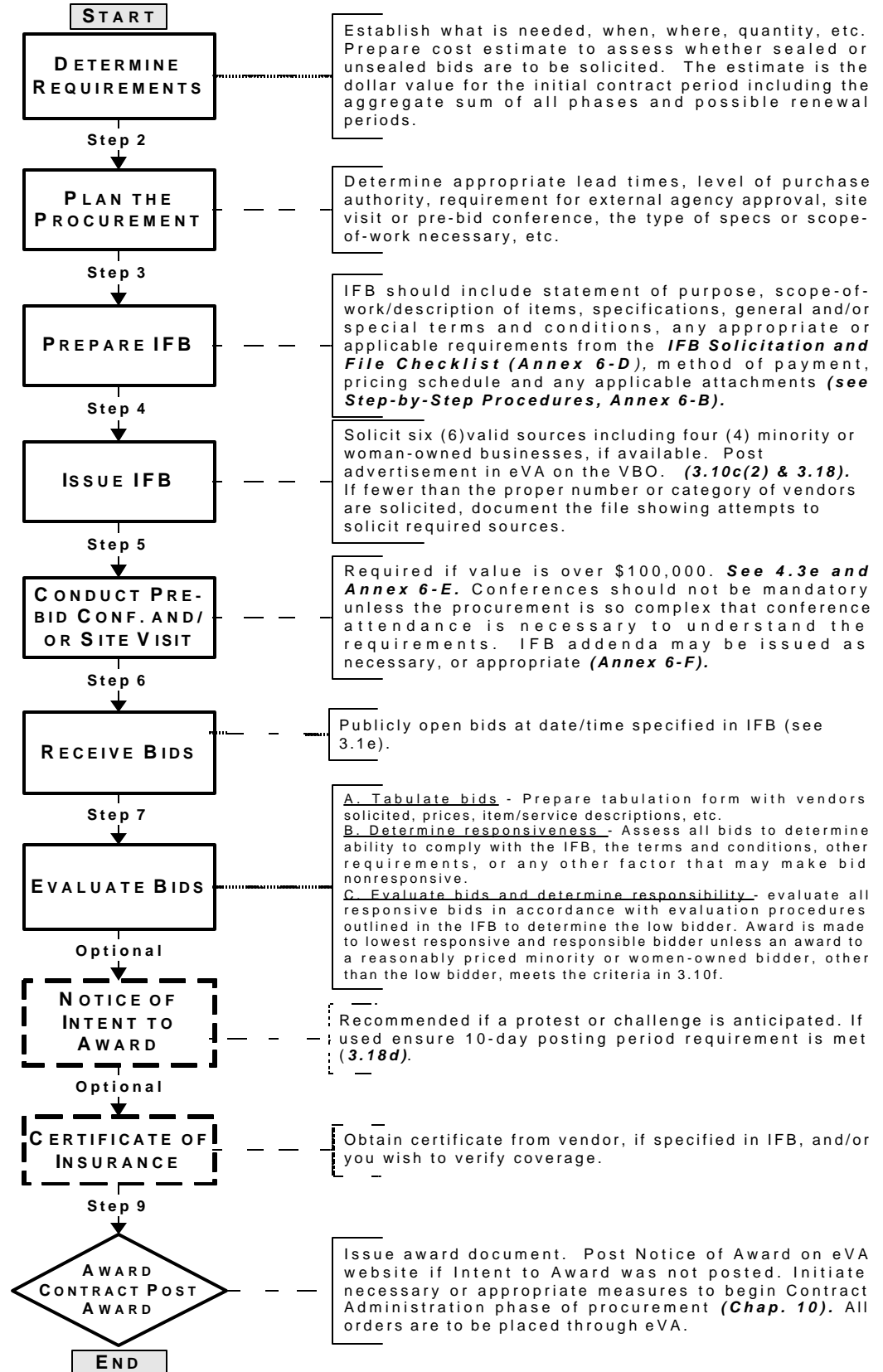
9.3 **Documentation.**

- b. **Posting Requirements.** Issue, post and/or publish required written notice. Emergency notices shall be posted on the DGS/DPS eVA web site (see 3.18 and www.eva.state.va.us for instructions for uploading procurement notices). For emergency procurements over \$50,000, notices must be posted on eVA and at a minimum state that the procurement has been declared an emergency and must also state that which is being procured, the contractor selected, and the date on which the contract was or will be awarded (see 3.18 for further guidance). See Annex 9-B for the proper form for internal posting, if desired.

Annex 6-A

COMPETITIVE SEALED BID PROCESS (CODE OF VA §§ 11-37, 11-41A)

For Goods and Non-professional Services (Over \$50,000)



Annex 7-A

COMPETITIVE NEGOTIATION PROCESS (CODE OF VA §§ 2.2-4301, 2.2-4303C)
For Goods and Non-professional Services over \$50,000

VPPA 2.2-4303. Agency head, or designee, must document that competitive sealed bidding is neither practicable, nor fiscally advantageous (7.2). Best Value Acquisition (BVA) may be used (see 7.5)

Use recommended format, Annex 7-B. Describe needs, evaluation factors, terms and conditions, and any unique requirements. If over \$100,000 see 3.10d. If using BVA, see Annex 7-F.

Solicit six (6) valid sources, including four (4) minority or women-owned businesses, if available. Publicly post on the eVA web site under VBO ads and advertise the RFP in newspaper (3.10 & 3.18).

Select 3-5 member evaluation panel. Include buyer, or someone, knowledgeable of VPPA, Vendors Manual, and APSPM

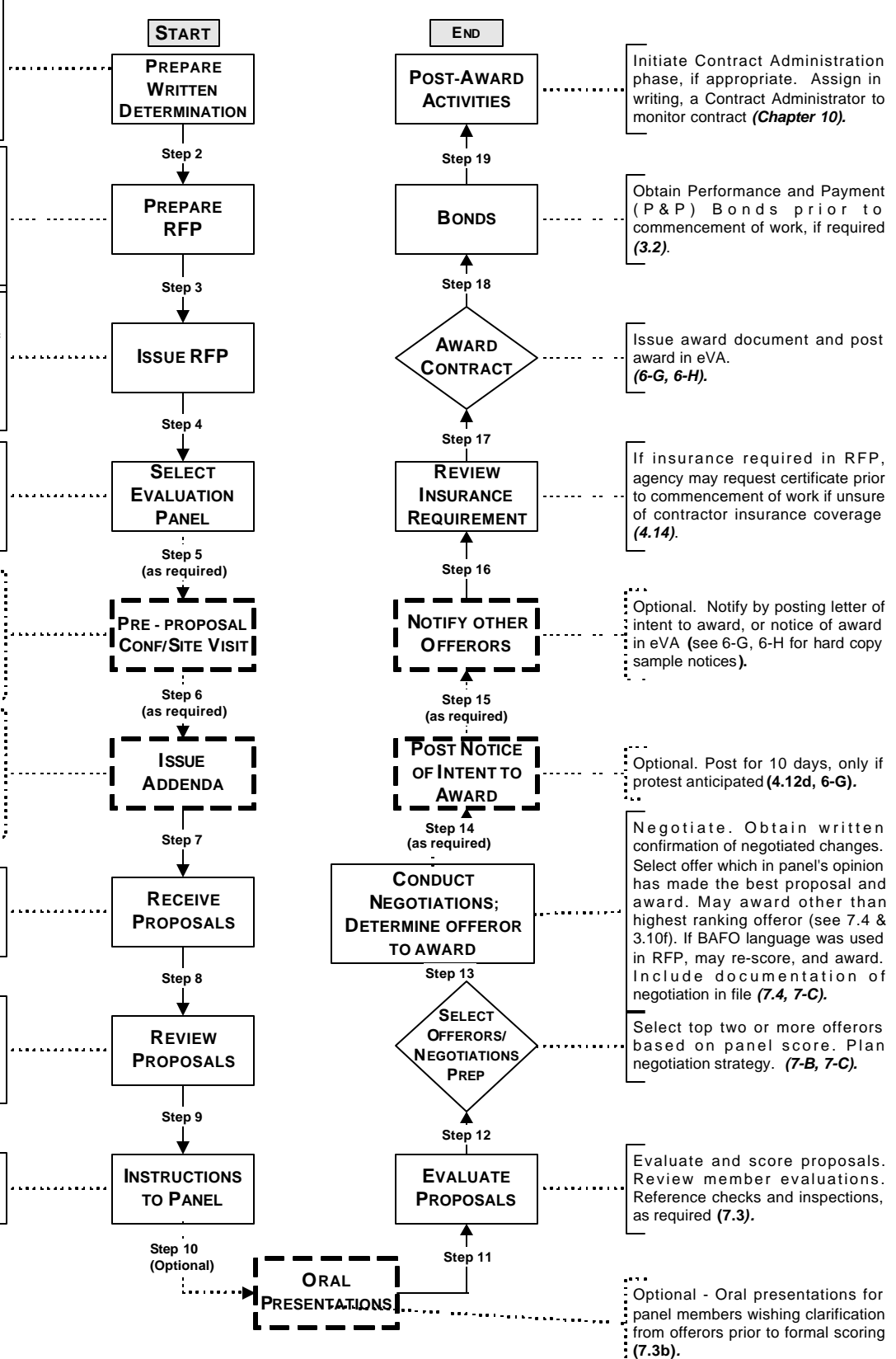
Optional. If specified in RFP, conduct pre-proposal conference, and/or vendor visit of work site. If mandatory, an attendance roster must be signed by attendees (6-E, 7.2h).

Optional. Use to correct errors, due dates, or communicate other changes to the solicitation (use addenda feature in VBO; if posting elsewhere see sample in Annex 6-F).

Open publicly if specified on cover sheet. If not, open and evaluate proposals after stipulated time (3.1e).

Review proposals against mandatory requirements. If missing required information, contact offeror. Allow opportunity for them to provide information.

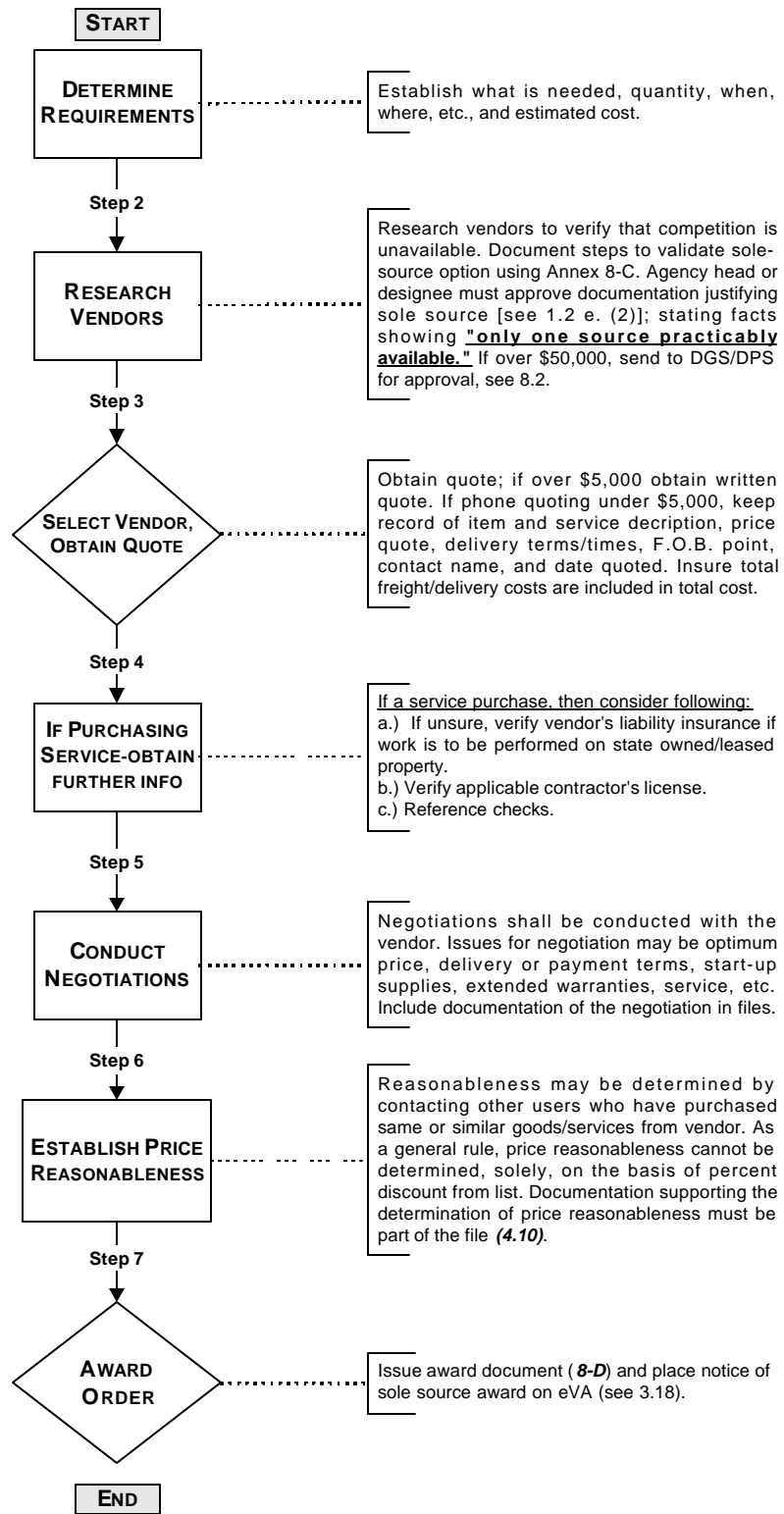
Provide detailed written instructions, outlining specific actions (7-B).



Annex 8 -A

SOLE SOURCE PROCESS (CODE OF VA § 2.2-4303E)

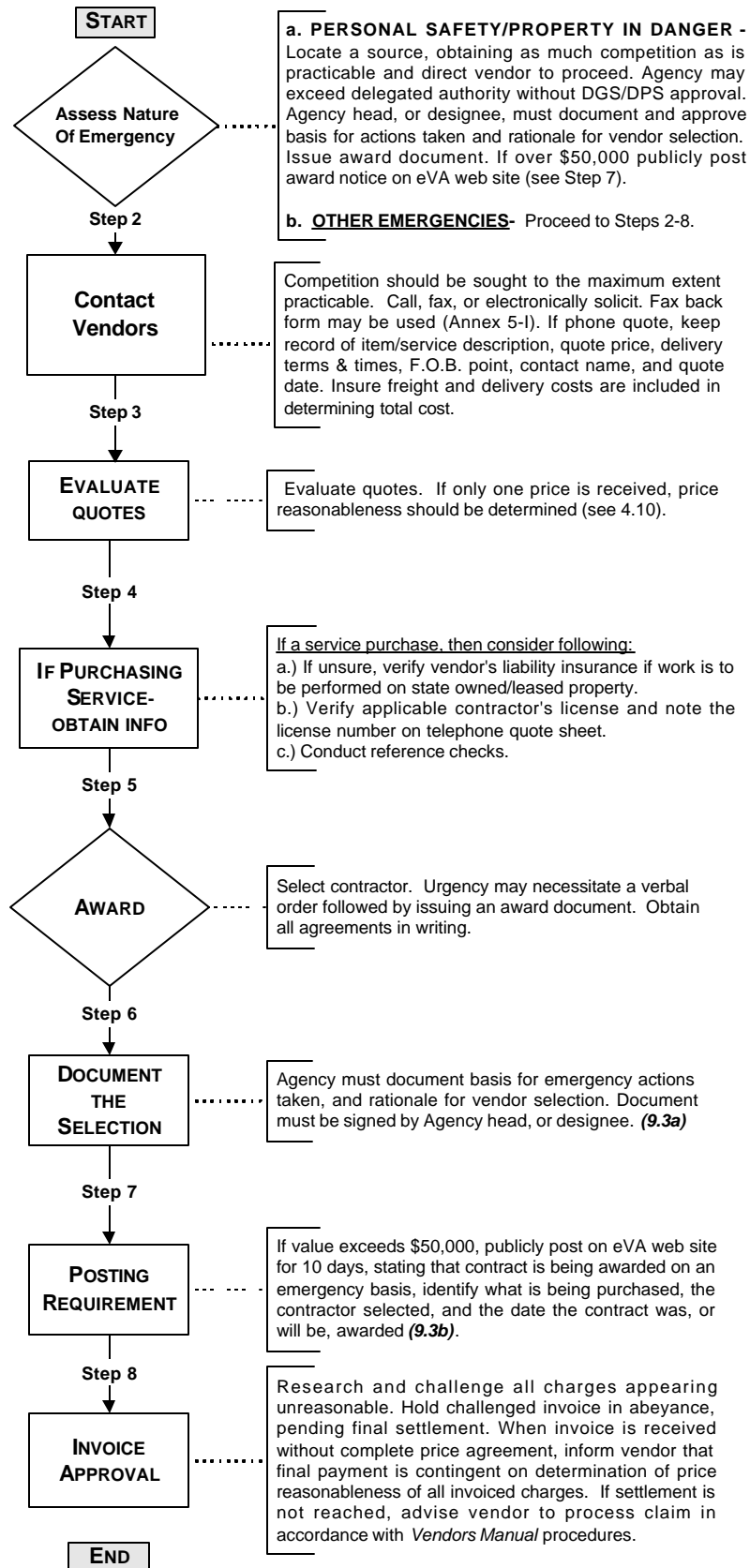
For Goods and Non-professional Services when competition is not practicably available.



Annex 9-A

EMERGENCY PROCUREMENT PROCESS (CODE OF VA 2.2-4303F)

For Goods and Services



- 14.5 e. **Quick Quote (over \$5,000 to \$50,000):** Solicitation of bids or quotes via Quick Quote is mandatory for non-contract requirements between \$5,000 and \$50,000. Solicit a minimum of four (4) valid sources; including two (2) minority or women-owned businesses, if available. Quick Quote may also be used to solicit a quote(s) for requirements under \$5,000. Quick Quote solicitations should be open for a minimum of one (1) day to allow vendors to return pricing by the closing date and time. Vendors must be registered in eVA in order to respond electronically to Quick Quotes in eVA. Electronic Quick Quote responses and other methods for vendors to respond to Quick Quotes may be used simultaneously. Provide the Standard eVA Term and Condition in Annex 14-A when providing Quick Quote information to an ad hoc vendor. The award may be made to a reasonably priced minority or woman-owned bidder that is other than the lowest priced bidder when such purchases are made under a remedial procurement plan established in accordance with guidelines proscribed by the Department of Minority Business Enterprise (DMBE). The resulting order must be processed through eVA. Reference the Quick Quote number in the header cross-reference field of the eVA requisition. Quick Quote solicitations and award notices are not required to be posted on the eVA web site.
- 14.5 f. Deleted.
- 14.5 h. **Small Purchase Charge Card (SPCC):** Where a SPCC has previously been entered into the eVA system it should be used to affect payment of all purchase transactions up to \$5,000 processed through vendors accepting the card. Every effort must be made to ensure that whenever a card is issued or cancelled, when a restriction imposed on a card is changed, etc., that the eVA system is updated as soon as practicable. Charge card purchases shall be processed through eVA unless the purchase is made over the counter at the site of the sale and picked up by the individual card holder, as exempted from processing through eVA in 14.9b 17.

- 14.12 **Self-Certification and Fees For Non-Compliant Purchase Transactions.** Monthly each agency and institution shall submit a self-certification that the agency has or has not complied with all requirements set forth herein. The self-certification shall be completed via a password protected electronic dashboard that has been made available on the eVA website. The self-certification shall be electronically signed by the agency or institution purchasing director, chief financial officer, or authorized designee(s).

If the agency or institution reports and certifies purchase transactions that do not comply with the eVA usage requirements set forth herein, the following shall also be submitted to the DPS eVA Business Manager, 805 East Broad Street, (P.O. Box 1199), Richmond, VA 23218-1199.

- a. a detailed explanation for why the agency or institution failed to comply with the requirements;
- b. a corrective action plan for achieving timely compliance;
- c. an itemized list of all non-compliant purchase transactions (including purchase order number, date, vendor, amount, commodity code, CARS subobject code, and method of procurement); and

NOTE: To facilitate the above reporting requirements, AMEX purchases can be aggregated and reported as a single report line item. For purposes of aggregating these AMEX purchases, the total number of AMEX transactions should be reported in the Purchase Order Number field, the date range should be reported in the Date field, the total aggregated dollar value of the AMEX transactions should be reported in the Amount field, and the word "AMEX" or should be reported in the Method of Procurement field. All other fields in this line item can be left blank. Do not report AMEX purchase transactions that are excluded by the provisions of Section 14.9.b.

- d. a check payable to the Treasurer of Virginia or an IAT directed to the Department of General Services in the amount of 1% of the total amount of all non-compliant purchase transactions.

Self-certifications and any required additional documentation/payment shall be submitted no later than the 15th day following the end of the monthly reporting period (e.g., August 15th, September 15th, October 15th, etc.).

Failure to submit the required monthly self-certification and associated documentation will result in the automatic assessment of a 1% fee based on the agency's or institution's total CARS expenditure less eVA spend for the reporting period.

Annex 14-B Deleted. (Note: This form is now found on the eVA website.)

Definitions added or changed in Appendix A:

Minority-Owned Business Enterprise: A business concern which is at least 51 percent owned by one or more minorities or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more minorities and whose management and daily business operations are controlled by one or more of such individuals.

Minority Individual: "Minority" means a person who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

"Asian Americans" means all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Marinas, the Philippines, U. S. territory of the Pacific, India, Pakistan, Bangladesh and Srilanka and who are regarded as such by the community of which these persons claim to be a part.

"African Americans" means all persons having origins in any of the original peoples of Africa and who are regarded as such by the community of which these persons claim to be a part.

"Hispanic Americans" means all persons having origins in any of the Spanish speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who are regarded as such by the community of which these persons claim to be a part.

"Native Americans" means all persons having origins in any of the original peoples of North America and who are regarded as such by the community of which these persons claim to be a part or who are recognized by a tribal organization.

"Eskimos and Aleuts" means all persons having origins in any of the peoples of Northern Canada, Greenland, Alaska, and Eastern Siberia and who are regarded as such in the community of which these persons claim to be a part.

Small Business Enterprise: "Small business enterprise" shall mean an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. Nothing in this provision prevents a program, agency, institution or subdivision from complying with the qualification criteria of a specific state program or a federal guideline to be in compliance with a federal grant or program.

Woman-Owned Business Enterprise: A business concern which is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more women, and whose management and daily business operations are controlled by one or more of such individuals.

Disadvantaged Business Enterprise: A small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Change to General Term & Condition J. on Payment:

J. PAYMENT:

1. To Prime Contractor:

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number

and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

- 3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

Appendix B, Section I, General Terms and Conditions, Paragraph U, Announcement of Award:

* **When Used:** Include in all solicitations over \$50,000.

Appendix B, Section II, Special Terms and Conditions, Paragraph 7. Award of Contract:

- 7. **AWARD OF CONTRACT:** Note: All solicitations must specify the method of award. If the total award including all possible renewal periods are expected to be less than \$100,000 use the appropriate Award clause below in J. or K. that states that the award may be made to a reasonably priced or reasonably ranked minority or

woman-owned bidder or offeror that is other than the lowest priced bidder or highest ranking offeror when such purchases are made under a remedial procurement plan established in accordance with guidelines proscribed by the Department of Minority Business Enterprise (DMBE). The wording on award to other than the lowest priced bidder or highest ranking offeror may be customized from the selection below to fit the circumstances of the purchasing agency. Select appropriate clause for the type of procurement:

- H. UNSEALED BEST VALUE AWARD(S):** Selection shall be made of the offeror(s) deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in this solicitation, including price, if so stated. Negotiations shall be conducted with the offeror(s) so selected. Cost and price factors shall be considered in relation to the evaluation factors stated in the solicitation, but need not be the sole determining factor. The Commonwealth will make the award(s) on a best value basis to the Offeror(s) which, in its opinion, represents the most advantageous and best offer. The award may be made to a reasonably ranked minority or woman-owned offeror that is other than the highest ranking offeror when such purchases are made under a remedial procurement plan established in accordance with guidelines proscribed by the Department of Minority Business Enterprise (DMBE). The Commonwealth may cancel this solicitation or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 2.2-4359 D).

*** When Used: For goods and nonprofessional services in an Unsealed Best Value Acquisition solicitation, and a single award or multiple awards are desired to meet the requirements of the agency/institution. Note: A single award shall not exceed \$50,000 and if making multiple awards, the total sum of all awards shall not exceed \$50,000.**

- I. BEST VALUE AWARD(S):** Selection shall be made of two or more offeror(s) deemed to be fully qualified and best suited among those submitting best value proposals on the basis of the evaluation factors included in this solicitation, including price, if so stated. Negotiations shall be conducted with the Offeror(s) whose proposal(s) represent the most advantageous and best offer. Awards up to \$100,000 may be made to a reasonably ranked minority or woman-owned offeror that is other than the highest ranking offeror when such purchases are made under a remedial procurement plan established in accordance with guidelines proscribed by the Department of Minority Business Enterprise (DMBE). Awards over \$100,000 will be made on a best value basis to the Offeror(s) which, in its opinion, represents the best overall combination of quality, price, and various elements of required goods/services, as stated in this solicitation, that in total are optimal relative to the agency's needs. The Commonwealth may cancel this solicitation or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 2.2-4359 D). The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's offer as negotiated.

*** When Used: For goods and nonprofessional services when competitive negotiation will be used in a sealed Best Value acquisition solicitation, and a single award or multiple awards are desired to meet the requirements of the agency/institution. Use for competitive negotiation where the award is expected to be up to \$100,000 to allow for award to a reasonable proposal from a minority or women-owned offeror who is other than the highest ranking offeror(s). This clause may be used for multiple awards.**

- J. AWARD TO OTHER THAN THE LOWEST PRICED BIDDER(S):** An award(s) will be made to the lowest responsive and responsible bidder(s) however; the award may be made to a reasonably priced minority or woman-owned bidder(s) that is other than the lowest priced bidder(s) when such purchases are made under a remedial procurement plan established in accordance with guidelines proscribed by the Department of Minority Business Enterprise (DMBE). Evaluation will be based on net prices. Unit prices, extensions and grand total must be shown. In case of arithmetic errors, the unit price will govern. If cash discount for prompt payment is offered, it must be clearly shown in the space provided. Discounts for prompt payment will not be considered in making awards. The right is reserved to make a separate award of each item, a group of items or all items, and to make an award either in whole or in part, whichever is deemed in the best interest of the Commonwealth. The State reserves the right to reject any and all bids in whole or in part, to waive any informality, and to delete items prior to making an award.

*** When Used: This award clause can be used in invitation for bids for goods or services for competitive bidding where the award is expected to be up to \$100,000 to allow for award to a reasonably priced**

minority or women-owned bidder, other than the lowest priced responsive and responsible bidder or bidders, in the case of multiple awards.

- K. **AWARD TO OTHER THAN THE HIGHEST RANKING OFFEROR(S):** Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror(s) which, in its opinion, has made the best proposal(s) and shall award the contract to that offeror; however, if the contract is up to \$100,000, the contract may be awarded to a reasonably ranked minority or woman-owned offeror, that is other than the highest ranking offeror, when such purchases are made under a remedial procurement plan established in accordance with guidelines proscribed by the Department of Minority Business Enterprise (DMBE). The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 2.2-4359D). Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

*** When Used:** For goods and nonprofessional services when competitive negotiation will be used. **This clause shall not be used in an Invitation for Bids or a professional services Request for Proposals.** Use for competitive negotiation where the award is expected to be up to \$100,000 to allow for award to a reasonable proposal from a minority or women-owned offeror who is other than the highest ranking offeror(s). This clause may be used for multiple awards.

Appendix B, Section II, Special Terms and Conditions, Paragraph 7. Award of Contract:

36. **SMALL, WOMEN, AND MINORITY-OWNED BUSINESSES SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:**

- A. Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such business to small, women, and/or minority-owned (SWAM) businesses. If SWAM subcontractors are used, the prime contractor agrees to report the use of SWAM subcontractors by providing the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, category type (small, women, or minority-owned), and type of product/service provided.
- B. Each prime contractor who wins an award in which provision of a small, women or minority-owned (SWAM) procurement plan is a condition of the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, category type (small, women, or minority-owned), and type of product/service provided. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate remedies may be assessed in lieu of withholding such payment.

*** When Used:** Use paragraph A. if the use of SWAM subcontractors by a prime contractor is desired and the purchasing agency desires a report of SWAM subcontractors used in the performance of the contract. Use paragraph B. in solicitations for goods, nonprofessional services, or non capital outlay construction when a SWAM procurement plan is a condition of the award.